IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

RFA.No. 192 of 2003()

OS.295/1996 of SUB COURT, OTTAPPALAM
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: APPELLANT/PLAINTIFF

MRS.VALSALA PAULSON, W/O.C.I.PAULSON,
CHEERAN HOUSE, AMAYUR, KOPPAM VILLAGE,
OTTAPPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS

RESPONDENTS: DEFENDANTS
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1. GOVERNMENT OF KERALA, REP. BY DISTRICT COLLECTOR, PALAKKAD.

2. GENERAL MANAGER, D.I.C., PALAKKAD.

3. THE TAHSILDAR, OTTAPPALAM.

4. THE VILLAGE OFFICER, KOPPAM VILLAGE.

BY GOVERNMENT PLEADER SMT.K.R.DEEPA.

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/03/2007, ALONG WITH WPC NO. 21377 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.3497/06 IN R.F.A.NO.192/03

DISMISSED

SD/- KURIAN JOSEPH, JUDGE.

9.3.2007. SD/- K.T.SANKARAN, JUDGE.

TGS

KURIAN JOSEPH & K.T.SANKARAN, JJ.

R.F.A.No.192/2003 & W.P.(C) No.21377/2006

Dated 9th March, 2007.

J U D G M E N T

Kurian Joseph, J.

The crux of the dispute in these cases pertains to the claim made by the appellant/petitioner for an extent of 3 acres of land in Survey Nos.35/6B and 36/6 of Amayur Desom, Koppam Village, Ottappalam Taluk. The property was assigned by the Government originally to M/s.Mohammed Abdul Ghani & Brothers for setting up a leather tanning unit. Later, the firm sold the property to the appellant in the year 1982. The appellant claims that she was in possession of the property from the year 1977 and she had conducted the industry till 1982. She wanted to restart the industry and for that purpose, she approached the Village Officer, Koppam for payment of the land tax. On refusal to accept the land tax, the appellant filed O.S.No.295/96 before the Sub Court, ottappalam for a mandatory injunction to receive the tax. The suit was dismissed on 15.3.2003 and hence the appeal.

2. In the meanwhile, the General Manager, District Industries Centre, Palakkad, alleging that the petitioner failed to

comply with the conditions of the assignment regarding starting of industry, cancelled the assignment and passed orders resuming possession. That order is Ext.P9 in the writ petition. According to the General Manager, the land was lying idle for 17 years and since the petitioner did not comply with the conditions of assignment, the land was liable to be resumed and hence the impugned order. The writ petition is filed challenging Ext.P9 order of the General Manager.

3. The contention of the appellant/petitioner is that only if the land tax was accepted, she could produce the receipt before various authorities for the purposes of getting independent electric connection, raising finance etc. The failure to restart the industry is thus owing to the circumstances beyond the control of the petitioner. Having heard the learned counsel for the petitioner and also the learned Government Pleader, who extensively referred to the counter affidavit and supported the impugned order, it is fairly clear that the suit instituted by the appellant is premature. Unless she has absolute title to the property, she cannot pray for a mandatory injunction directing the Village Officer to accept the tax. Whether she has absolute title or not will depend on the order to be passed by the

Government, in case the appellant/petitioner pursues Ext.P9 before the Government. In other words, depending on the order to be passed by the Government on an appeal filed against Ext.P9 order passed by the General Manager, District Industries Centre, Palakkad, it will be open to the petitioner to pursue the relief claimed in the suit appropriately. Faced with such a situation, the appellant seeks permission to withdraw the suit, without prejudice to the liberty to approach the Government, incorporating all her grievances. Accordingly, the appeal is dismissed and O.S.295/96 on the file of the Subordinate Judge's Court, Ottappalam is dismissed as withdrawn, and the writ petition is disposed of as follows :-

In the event of the petitioner approaching the Government within a period of six weeks from today against Ext.P9 and any other related Government/departmental Orders, the matter will be duly considered by the Government in the concerned department with notice to the petitioner within another four months. It will be open to the petitioner to take all available contentions before the Government, including the contentions centering round on Ext.P3. Subject to the petitioner thus approaching the Government within a period of six weeks

from today, the status quo obtaining as on today with regard to the possession of property will continue till the Government passes orders as above. However, it is made clear that the petitioner shall not commit any waste in the property, she shall not make any improvements in the property, she shall not alienate or otherwise create any encumbrance in the property or she shall not induct any strangers in the property, till orders are passed by the Government as above.

KURIAN JOSEPH, JUDGE.

K.T.SANKARAN, JUDGE.

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KURIAN JOSEPH & K.T.SANKARAN, JJ

L.A.A. NO. OF 2004

J U D G M E N T

Dated 8th March, 2007.